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E-FILED - 11/29/07

Additional counsel for Defendants RICHARD DOYLE, GEORGE
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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIDEO SOFTWARE DEALERS
 ASSOCIATION and ENTERTAINMENT
 SOFTWARE ASSOCIATION,
 Plaintiffs,

CASE NO. C 05-4188 RMW (RS)

STIPULATION AND XXXXXXXXXXXXXX ORDER

vs.

ARNOLD SCHWARZENEGGER, in his official
 capacity as Governor of the State of California;
 BILL LOCKYER, in his official capacity as
 Attorney General of the State of California;
 GEORGE KENNEDY, in his official capacity as
 Santa Clara County District Attorney, RICHARD
 DOYLE, in his official capacity as City Attorney
 for the City of San Jose, and ANN MILLER
 RAVEL, in her official capacity as County
 Counsel for the County of Santa Clara,
 Defendants.

1 WHEREAS, the Court granted summary judgment in favor of plaintiffs and permanently
 2 enjoined enforcement of the portion of California Civil Code §§ 1746-1746.5 ("the Act"), holding
 3 that the Act violated the United States Constitution, and, on August 14, 2007, entered its Final
 4 Judgment ("the Judgment");

5 WHEREAS, on August 28, 2007, plaintiffs timely filed a Motion for Attorneys' Fees and
 6 Costs (the "Motion"), seeking reimbursement of the attorneys' fees and costs they incurred as a result
 7 of their successful constitutional challenge to the Act, pursuant to 42 U.S.C. § 1988, 28 U.S.C.
 8 § 1920, Fed. R. Civ. P. 54(d), and Local Rule 54-6, currently notice for hearing on November 30,
 9 2007;

10 WHEREAS, the parties have agreed to resolve plaintiffs' fee petition without further
 11 litigation;

12 NOW THEREFORE, subject to the approval of the Court, IT IS HEREBY STIPULATED
 13 THAT :

14 1. By no later than November 15, 2008, Arnold Schwarzenegger and Bill Lockyer
 15 ("State Defendants") shall pay plaintiffs, and plaintiffs shall accept, \$276,000.00 plus interest
 16 calculated at the statutory rate under 28 U.S.C. § 1961 running from the date that this stipulation is
 17 executed by the parties to the date of payment in full. Such payment shall be made in full satisfaction
 18 of plaintiffs' claims for attorneys' fees and costs against all defendants associated with litigating this
 19 case prior to entry of the Judgment and with preparation of the pending Motion.

20 2. The State Defendants shall, no later than April 15, 2008, request the introduction in
 21 the 2008 California legislative session of an Attorney General Claims Bill for payment of the amount
 22 stipulated in paragraph 1 and shall request the expedited consideration of the measure.

23 3. Subject to payment in full of the amount stipulated in paragraph 1, plaintiffs, for
 24 themselves and their successors and assigns, release and forever discharge the defendants, their
 25 respective predecessors, successors, assigns, employees, attorneys, agents, and officers from any and
 26 all claims for attorneys' fees and costs associated with litigating this case prior to entry of the
 27 Judgment and with preparation of the Motion.

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4. Without limiting in any way plaintiffs' rights to enforce the terms of this Order or to seek attorneys' fees and costs associated with any appeal or other further proceedings, plaintiffs' Motion for Attorneys' Fees and Costs is dismissed with prejudice.

5. If, after all appeals have been exhausted or the time for all remaining appeals has expired, plaintiffs are no longer the prevailing party in this case, the plaintiffs shall pay back the amount stipulated in paragraph 1 within thirty (30) days of the disposition of the final appeal or the expiration of time for all remaining appeals.

6. This Court shall retain jurisdiction to hear any motion to enforce the terms of this Stipulated Order. Plaintiffs are authorized to seek to enforce the terms of this Stipulated Order and seek immediate payment by the State Defendants of the amount stipulated in paragraph 1 (including interest accruing until the date that the amount is paid in full), if payment in full is not made by November 15, 2008. Plaintiffs shall be entitled to their reasonable attorneys' fees and costs incurred for any action to enforce the terms of this Order based on the State Defendants' failure to comply, in any way, with their obligations in paragraph 1 above.

DATED: November __, 2007

GIBSON, DUNN & CRUTCHER LLP
JENNER & BLOCK LLP

By: 

Paul M. Smith

Attorneys for Plaintiffs VIDEO SOFTWARE
DEALERS ASSOCIATION (now known as the
Entertainment Merchants Association) and
ENTERTAINMENT SOFTWARE ASSOCIATION

DATED: November 21, 2007

OFFICE OF THE ATTORNEY GENERAL

By: 

Steven M. Gevercer
Deputy Attorney General

Attorneys for Defendants SCHWARZENEGGER and
LOCKYER

1
2 DATED: November __, 2007


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8 By: _____
Robert Fabela
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9
10 Attorneys for Defendant RICHARD DOYLE

11 DATED: November 21, 2007

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16 By: 
David M. Rollo
Deputy County Counsel

18 Attorneys for Defendants GEORGE KENNEDY and
19 ANN MILLER RAVEL

20 [XXXXXXXXXXXX] ORDER

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: _____

24 _____
Honorable Ronald M. Whyte
United States District Court Judge

1
2 DATED: November 21, 2007

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8 By: Robert Fabela
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10 Attorneys for Defendant RICHARD DOYLE

11 DATED: November __, 2007

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17 By: _____
David M. Rollo
Deputy County Counsel

18
19 Attorneys for Defendants GEORGE KENNEDY and
ANN MILLER RAVEL

20 XXXXXXXXXXXXXXXX ORDER

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: 11/29/07 _____

23 Ronald M. Whyte
24 Honorable Ronald M. Whyte
25 United States District Court Judge
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27
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